

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE**  
**AT GREENEVILLE**

JANE DOE 1, JANE DOE 2, JANE DOE 3,  
JANE DOE 4, JANE DOE 5, K.T. and  
M.T., Successors-in-interest to JANE DOE 6,  
JANE DOE 7, JANE DOE 8, and JANE DOE  
9,

Plaintiffs,

CITY OF JOHNSON CITY, TN., et al.,

Defendants.

No.: 2:23-cv-00071-TRM-CRW

PLAINTIFFS' DEMAND  
JURY TRIAL

**DEFENDANTS' MOTION FOR A PROTECTIVE ORDER PURSUANT TO FED. R. CIV. P. 26 AND/OR MOTION TO QUASH *SUBPOENA DUCES TECUM* ISSUED TO DAIGLE LAW GROUP PURSUANT TO FED. R. CIV. P. 45**

Defendants, City of Johnson City, Tennessee (“City” or “Johnson City”), Karl Turner, in his official and individual capacities, Captain Kevin Peters, in his official capacity, Investigator Toma Sparks in his official capacity, and Investigator Justin Jenkins in his official capacity, hereby appear, by and through counsel, in accordance with Fed. R. Civ. P. 26(c) and 45, and move this Court for a protective order and/or a motion to quash the *subpoena duces tecum* served on the Daigle Law Group (hereinafter, “Daigle”), a non-party to this action. For the reasons set forth below, the subpoena issued to Daigle should be quashed and/or a Protective Order entered.

1. On or about December 28, 2023, the Plaintiffs served the *subpoena duces tecum* (hereinafter, “Subpoena”) on Daigle. A copy of the Subpoena is attached hereto as **Exhibit 1**. The Subpoena commands Daigle to produce certain documents to the Plaintiffs on January 15, 2023 at

5:00 a.m. As the date and time for production had already passed when the subpoena was served, compliance with the Subpoena is not possible. Thus, the City asks this Court to enter a protective order and/or quash the subpoena.

2. Additionally, the City seeks a protective order regarding the information sought in the Subpoena, because the Plaintiffs are impermissibly attempting to subpoena information from the City's non-testifying, consulting expert in a separate case, *Dahl v. Johnson City et. al*, No. 2:22-cv-00072-KAC-JEM. On June 23, 2022, a former Special Assistant United States Attorney, Kateri Dahl (hereinafter, "Ms. Dahl"), filed a lawsuit against the City and Chief Turner. *See Dahl v. Johnson City et. al*, No. 2:22-cv-00072-KAC-JEM. A copy of the Complaint filed in the United States District Court for the Eastern District of Tennessee by Ms. Dahl is attached hereto as **Exhibit 2**. As set out in the Declaration of City Manager Cathy Ball, which is attached hereto as **Exhibit 3**, the City retained Daigle as a non-testifying, consulting expert after Ms. Dahl filed her complaint. Thus, the material sought in the Daigle Subpoena is protected pursuant to the "Non-Testifying Expert Privilege" contained in Fed. R. Civ. P. 26(b)(4)(D).

3. The City also moves for a protective order and/or order quashing the Daigle Subpoena pursuant to Fed. R. Evid. 407, because the Subpoena seeks information that is not discoverable, as it is evidence of subsequent remedial measures voluntarily undertaken by the City.

4. Finally, the City moves for a protective order and/or order quashing the Daigle Subpoena, because the material sought in the Daigle Subpoena is not proportionate to the needs of the case. Any relevant and discoverable documents and information sought in the Daigle Subpoena

can be obtained from its original source. Additionally, the proportional needs of the Plaintiffs to the opinions and work product of a non-testifying expert does not outweigh the “safe harbor” created by Fed. R. Civ. P. 26(b)(4)(D) or the public policy considerations invoked by Fed. R. Evid. 407. The Daigle Subpoena also commands Daigle to produce documents and information that contain the identity and contact information for victims of sexual assault. These victims have a right to be protected from harassment and embarrassment, and there is not a proportional need for the Plaintiffs to obtain files from Daigle that contain victim names, addresses, telephone numbers, and social security numbers. To the extent the Court holds that Daigle is obligated to comply with the subpoena, these Defendants ask the Court to require Daigle to produce his records with victim names, addresses, telephone numbers, social security numbers, and photographic evidence redacted, to protect the rights of the victims and in compliance with Tenn. Code Ann. § 10-7-504(q)(1).

In Support of their Motion for a Protective Order and/or Motion to Quash, these Defendants rely upon their Memorandum of Law in Support of Motion for a Protective Order and/or Motion to Quash, filed contemporaneously with the instant Motion, and Exhibits 1-3 to their Motion.

RESPECTFULLY submitted this 12<sup>th</sup> day of January, 2024.

*s/ Emily C. Taylor*

Emily C. Taylor, BPR # 027157

Reid A. Spaulding, BPR # 023363

**WATSON, ROACH, BATSON &  
LAUDERBACK, P.L.C.**

P.O. Box 131

Knoxville, TN 37901-0131

Phone: (865) 637-1700

Emails: etaylor@watsonroach.com

rspaulding@watsonroach.com

*s/K. Erickson Herrin*

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K. Erickson Herrin, BPR # 012110

**HERRIN, McPEAK & ASSOCIATES**

P. O. Box 629

Johnson City, TN 37605-0629

Phone: (423) 929-7113

Email: lisa@hbm-lawfirm.com

*Attorneys to Defendants, Johnson City, Tennessee, Karl Turner, in his individual and official capacity; Captain Kevin Peters, in his official capacity, Investigator Toma Sparks, in his official capacity, and Investigatory Justin Jenkins, in his official capacity*

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system:

Heather Moore Collins  
Ashley Shoemaker Walter  
HMC CIVIL RIGHTS LAW, PLLC  
7000 Executive Center Drive, Suite 320  
Brentwood, TN 37027  
*Counsel for Plaintiffs*

Vanessa Baehr-Jones  
ADVOCATES FOR SURVIVORS OF  
ABUSE, PC  
4200 Park Boulevard No. 413  
Oakland, CA 94602  
*Counsel for Plaintiffs*

Kevin Osborne  
Elizabeth Kramer  
ERICKSON KRAMER OSBORNE, LLP  
44 Tehama Street  
San Francisco, CA 94105  
*Counsel for Plaintiffs*

Daniel H. Rader IV  
Daniel H. Rader III  
André S. Greppin  
MOORE, RADER & YORK PC  
46 N. Jefferson Avenue  
P.O. Box 3347  
Cookeville, TN 38502-3347  
*Counsel for Kevin Peters in his individual capacity*

Kristin Ellis Berexa  
Ben C. Allen  
FARRAR & BATES  
12 Cadillac Drive, Suite 480  
Brentwood, TN 37027-5366  
*Counsel for Toma Sparks in his individual capacity*

Keith H. Grant  
Laura Beth Rufolo  
Philip Aaron Wells  
ROBINSON, SMITH & WELLS, PLLC  
Suite 700, Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450  
*Counsel for Justin Jenkins in his individual capacity*

Dated this 12<sup>th</sup> day of January, 2024.

s/Emily C. Taylor, BPR No. 27157  
EMILY C. TAYLOR, BPR # 027157  
**WATSON, ROACH, BATSON &  
LAUDERBACK, P.L.C.**  
P.O. Box 131  
Knoxville, TN 37901-0131  
Phone: (865) 637-1700  
Email: etaylor@watsonroach.com